

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release ("Agreement") is made and entered into by and between the County of Los Angeles ("County") and T-Mobile West Corporation ("T-Mobile"). The County and T-Mobile are referred to herein individually as a "Party" and collectively as "the Parties." This Agreement is made pursuant to the following terms and conditions:

### **RECITALS**

- A. On or about July 30, 2007, T-Mobile applied to the County for a Conditional Use Permit and other necessary approvals to construct certain wireless telecommunications facilities. The application relates to Project No. 2007-02104-(4), Conditional Use Permit No. 2007-00149-(4) (the "Application"), which proposed the construction, operation and maintenance of an unmanned telecommunications facility located on a Southern California Edison easement between South Frame Avenue and South Holmes Circle in the unincorporated area of the County, Hacienda Heights Zoned District (the "Site"). Pursuant to the Application, T-Mobile sought to mount a total of 12 antennas on the legs of an existing 151-foot tall Southern California Edison lattice tower and painted to match, with associated equipment situated at the base of the tower in a 300 square foot leased area, enclosed by a six-foot high concrete block wall.
- B. The County's Regional Planning Commission Hearing Officer and the Regional Planning Commission both approved the Application. However, on appeal, the County's Board of Supervisors approved denial findings denying the Application.
- C. On April 7, 2010, T-Mobile filed a lawsuit entitled *T-Mobile West Corporation v. County of Los Angeles*, United States District Court for the Central District of California Case No. CV 10-2523 SVW (SHx) (the "Action"). In the Action, T-Mobile alleges that the County violated 47 U.S.C. §§ 332(c)(7)(B)(i)(I) (unreasonable discrimination), 332(c)(7)(B)(i)(II) (effective prohibition of personal wireless service), 332(c)(7)(B)(iii) (lack of substantial evidence), and 332(c)(7)(B)(iv) (denial based on environmental effects of radio frequency emissions). In the Action, T-Mobile seeks injunctive and declaratory relief requiring the County to grant the Application.
- D. On May 6, 2010, the County filed an Answer in the Action, denying that it violated 47 U.S.C. § 332 and denying all liability to T-Mobile.
- E. The Parties wish to avoid the expense, delay and uncertainty of litigation and to settle the disputes among them.
- F. To settle their disputes and to avoid the costs of litigation, the Parties hereto have negotiated a settlement of the disputed claims, which is set forth below.

## AGREEMENT

For and in consideration of the commitments made herein, County and T-Mobile agree as follows:

1. T-Mobile has agreed to reduce the maximum number of antennas allowed under the Conditional Use Permit to six. T-Mobile has prepared revised plans and supporting documents and conditions of approval, which are collectively attached hereto as Exhibit A.
2. The County Board of Supervisors agrees to hold a public hearing to consider approval of a Conditional Use Permit for the revised six antenna project reflected in the documents attached hereto as Exhibit A. The County is not committing to approve the Conditional Use Permit and the Board of Supervisors retains discretion to approve, modify or deny the project.
3. If the County Board of Supervisors approves the Conditional Use Permit in substantially the same form as reflected in Exhibit A, T-Mobile will dismiss with prejudice the Action within ten (10) calendar days following notice of such approval.
4. In the event the County does not approve the Conditional Use Permit by April 27, 2011, or materially modifies the Conditional Use Permit and conditions of approval, then this Agreement is null and void and T-Mobile may proceed with the Action.
5. For and in consideration of the commitments made herein, County, for itself and each of its Supervisors, departments, agencies, subdivisions, districts, predecessors, successors, assigns, agents, partners, affiliates, officers, employees, consultants, lawyers, accountants and representatives, whether identified or not, including all persons and entities which may be claimed to be liable or to possess claims, does hereby fully release and discharge T-Mobile, and each of its predecessors, successors, assigns, agents, partners, parents, subsidiaries, affiliates, directors, officers, employees, consultants, lawyers, accountants, and representatives, whether identified or not, from any and all claims, demands, suits, causes of action, proceedings, charges, promises, obligations, liabilities, costs, or expenses of any kind whatsoever, which they or any of them now have or have ever had, known or unknown, liquidated or unliquidated, contingent or non-contingent, arising out of any fact, act, omission, activity, event, relationship, situation, contract or agreement (whether written, oral, express, implied or otherwise), occurrence or happening relating in any way to the matters described in the Complaint, provided, however, that nothing herein shall release any party from any of the obligations set forth in this Agreement or the obligation of T-Mobile to comply with applicable County, State, and Federal laws governing the Conditional Use Permit and conditions of approval if the Conditional Use Permit is approved by the County Board of Supervisors.
6. For and in consideration of the commitments made herein, T-Mobile, for itself and its predecessors, successors, assigns, agents, partners, parents, subsidiaries, affiliates, directors, officers, shareholders, investors, employees, consultants, lawyers, accountants and representatives, whether identified or not, including all persons and entities which may be claimed to be liable or to possess claims, does hereby fully release and discharge County and each of its Supervisors, departments, agencies, subdivisions, districts, predecessors, successors,

assigns, agents, partners, parents, subsidiaries, affiliates, directors, officers, employees, consultants, lawyers, accountants, and representatives, whether identified or not, from any and all claims, demands, suits, causes of action, proceedings, charges, promises, obligations, liabilities, costs, or expenses of any kind whatsoever, which they or any of them now have or have ever had, known or unknown, liquidated or unliquidated, contingent or non-contingent, arising out of any fact, act, omission, activity, event, relationship, situation, contract or agreement (whether written, oral, express, implied or otherwise), occurrence or happening relating in any way to the matters described in the Complaint, provided, however, that nothing herein shall release any party from any of the obligations set forth in this Agreement.

7. The Parties represent and acknowledge that in executing this Agreement, they do not rely and have not relied upon any representation or statement made by the other Party or by the other Party's agents, representatives or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise, other than those matters expressly stated in this Agreement.

8. The Parties each acknowledge that they have had a full and unhindered opportunity to consult with legal, accounting, financial and tax consultants of their own choosing before entering into this Agreement.

9. The Parties represent that they have not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or other matter herein related.

10. This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

11. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings of any kind whatsoever, whether written, oral, express, implied or otherwise, between County and T-Mobile, with respect to the subject matter of this Agreement. Any modification or amendment to this Agreement must be in writing and must be signed and dated by all of the Parties, and must explicitly state that it is intended to be an amendment to or modification of this Agreement.

12. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

13. The Agreement may be executed in counterparts and all such counterparts taken collectively shall constitute one agreement.

14. Each Party shall each bear its own costs and expenses, including attorneys' fees, including those incurred in connection with the Action or the negotiation and execution of this Agreement. In the event of any proceedings to enforce this Agreement, the prevailing Party shall be entitled, in addition to any other appropriate relief, to recover its reasonable costs and attorneys' fees.

15. Nothing in this Agreement shall be construed as an admission or estoppel on the part of any Party as to any matter, including the legal necessity of the permitting process specified in this Agreement. This Agreement may not be introduced into evidence in any action or proceeding other than an action or proceeding to enforce the Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

Dated: February 16  
January 16, 2011

COUNTY OF LOS ANGELES

By: [Signature]

T-MOBILE WEST CORPORATION

Dated: January 24, 2011.

By: [Signature]

Its Corporate Counsel, T-Mobile USA, Inc.

Approved as to Form:

Dated: February  
January 16, 2011.

COUNTY OF LOS ANGELES

By: [Signature]

Scott Kuhn, Senior Deputy County Counsel

OFFICE OF THE COUNTY COUNSEL  
Attorneys for County of Los Angeles

DAVIS WRIGHT TREMAINE LLP

By: [Signature]

Martin L. Fineman

Attorneys for T-Mobile West Corporation

## **EXHIBIT A**

1. Conditions of approval (attached)
2. Site plans consisting of 19 pages (emailed to Scott Kuhn on 10/21/2010)
3. Photosimulations (emailed to Scott Kuhn on 10/29/2010)
4. Statement of RF emission compliance with FCC requirements from Preet Sighn, RF engineer dated November 1, 2010 and emailed to Scott Kuhn on November 1, 2010

1. This grant authorizes T-Mobile the use of the subject property for the construction, operation and maintenance of a wireless telecommunication facility consisting of up to six (6) panel antennas mounted on the legs of an existing 151-ft. lattice tower with associated equipment situated at the base located in a 300 sq. ft. lease area within the Hacienda Heights Zoned District. All facilities shall be maintained as depicted on the approved Exhibit "A" and subject to all of the following conditions of approval:
  - a. Any and all graffiti on the proposed wall and the facility shall be removed within 24 hours of notice of its application;
  - b. The facility shall be operated in accordance with regulations of the State Public Utilities Commission;
  - c. Said facility shall be removed if in disuse for more than six months;
  - d. Insofar as is feasible, the operator shall cooperate with any subsequent applicants for wireless communications facilities in the vicinity with regard to possible co-location. Such subsequent applicants will be subject to the regulations in effect at that time;
  - e. All structures shall conform with the requirements of the Building and Safety Division of the Department of Public Works;
  - f. All equipment shall be a neutral color excluding black to blend with its surroundings and shall be maintained in good condition at all times;
  - g. The permittee shall provide written verification that the proposed facility's radio-frequency radiation and electromagnetic field emissions will fall within the adopted FCC standards for safe human exposure to such forms of non-ionizing electromagnetic radiation when operating at full strength and capacity for the lifetime of this conditional use permit. The permittee/operator shall submit a copy of the initial report on the said facility's radio frequency emissions level, as required by the Federal Communications Commission requirements, to the Department of Regional Planning;
  - h. Any proposed wireless telecommunications facility that will be co-locating on the proposed facility will be required to submit the same written verification and include the cumulative radiation and emissions of all such facilities;
  - i. Said facility, including any lighting, fences, shields, cabinets, and poles shall be maintained by the operator in good repair, free from trash, debris, litter and graffiti and other forms of vandalism. Any damage from any cause shall be repaired as soon as reasonably possible to minimize occurrences of dangerous conditions or visual blight;
  - j. The subject property shall be developed and maintained in substantial compliance with the plans marked Exhibit "A." All revised plot plans must be accompanied by the written authorization of the property owner;

- k. The operator shall provide satisfactory safeguards to prevent unauthorized access to the lease area enclosure;
  - l. The 300 sq. ft. leasehold area shall be surrounded by a 6-ft. high concrete block wall to buffer the associated equipment cabinets from the surrounding residential community;
  - m. All development shall take place within the area confined by the concrete block wall; and
  - n. Prior to construction, the applicant shall contact the "Audubon Society" to ensure installation will not disrupt the "nesting patterns" of native bird species.
- 2. Unless otherwise apparent from the context, the term "permittee" shall include the applicant and any other person, corporation, or other entity making use of this grant.
  - 3. This grant shall not be effective for any purpose until the permittee, and the owner of the tower if other than the permittee, have filed at the office of the Department of Regional Planning their affidavit stating that they are aware of and agree to accept all of the conditions of this grant, and that the conditions of the grant have been recorded as required by Condition No. 7, and until all required monies have been paid pursuant to Condition No. 9.
  - 4. The permittee shall defend, indemnify and hold harmless the County, its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees to attack, set aside, void or annul this permit approval, which action is brought within the applicable time period of Government Code Section 65009. The County shall promptly notify the permittee of any claim, action, or proceeding and the County shall cooperate fully in the defense. If the County fails to promptly notify the permittee of any claim, action or proceeding, or if the County fails to cooperate fully in the defense, the permittee shall not thereafter be responsible to defend, indemnify, or hold harmless the County. The permittee shall be responsible for all expenses involved in the County's cooperation in the defense, including but not limited to, collection and duplication of records, depositions, testimony, and other assistance to the permittee or permittee's counsel.
  - 5. This grant will expire unless used within 2 years from the date of approval. A one-year time extension may be requested in writing before the expiration date.
  - 6. If any material provision of this grant is held or declared to be invalid, the permit shall be void and the privileges granted hereunder shall lapse.
  - 7. Prior to the use of this grant, the property owner or permittee shall record the terms and conditions of the grant in the office of the County Recorder. In addition, upon any transfer or lease of the property during the term of this grant, the property owner or permittee shall promptly provide a copy of the grant and its conditions to the transferee or lessee of the subject property.

8. This grant will terminate ten years after this permit approval. Entitlement to use of the property thereafter shall be subject to the regulations then in effect. At least six (6) months prior to the expiration of this permit and in the event that the permittee intends to continue operations after such date, permittee shall make an application for continuance of the use permitted under this grant, whether permittee is or is not proposing modification to the use at that time.
9. The subject property shall be maintained and operated in full compliance with the conditions of this grant and any law, statute, ordinance, or other regulation applicable to any development or activity on the subject property. Failure of the permittee to cease any development or activity not in full compliance shall be a violation of these conditions. The permittee shall deposit with the County of Los Angeles the sum of \$750.00. The deposit shall be placed in a performance fund, which shall be used exclusively to compensate the Department of Regional Planning for all expenses incurred while inspecting the premises to determine the permittee's compliance with the conditions of approval. The deposit provides for 5 (five) biennial inspections. Inspections shall be unannounced.

If any inspection discloses that the subject property is being used in violation of any one of the conditions of this grant, the permittee shall be financially responsible and shall reimburse the Department of Regional Planning for all additional enforcement efforts necessary to bring the subject property into compliance. Inspections shall be made to ensure compliance with the conditions of this grant as well as adherence to development in accordance with the approved site plan on file. The amount charged for additional inspections shall be \$150.00 per inspection, or the current recovery cost, whichever is greater.

10. The permittee is reminded of the consequences of any violation of any provision of this grant. Notice is further given that the Regional Planning Commission or a hearing officer may, after conducting a public hearing, take any action authorized by County ordinance, if the Commission or hearing officer finds that these conditions have been violated or that this grant has been exercised so as to be detrimental to the public's health or safety or so as to be a nuisance.
11. Upon receipt of this letter, the permittee shall contact the Fire Prevention Bureau of the Los Angeles County Fire Department to determine what facilities may be necessary to protect the property from fire hazard. Any necessary facilities shall be provided as may be required by said Department.
12. All requirements of the Zoning Ordinance and of the specific zoning of the subject property must be complied with unless otherwise set forth in these conditions or shown on the approved plans.
13. All structures, walls, and fences open to public view shall remain free of extraneous markings, drawings, or signage. These shall include any of the above that do not directly relate to the facility being operated on the premises or that do not provide pertinent information about said premises.



14. In the event of such extraneous markings occurring, the permittee shall remove or cover said markings, drawings, or signage within 24 hours of notice of such occurrence, weather permitting. Paint utilized in covering such markings shall be of a color that matches, as closely as possible, the color of the adjacent surfaces. The only exceptions shall be seasonal decorations or signage provided under the auspices of a civic or non-profit organization.
15. General maintenance (once a month maintenance visit) by the maintenance crew will be serviced by walking onto the subject property only. Vehicular access will not be permitted within the site to reduce dust particles.
16. Parking of the maintenance vehicle will be permitted along Frame Avenue and Holmes Circle.